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Docket No.: 083163-0101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Inventors : Schneebeli *et al.*
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Title : VIRTUAL CONTENT PUBLISHING SYSTEM AND
METHOD

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Examiner : Grant M. Ford
Docket No. : 1215

Mail Stop Appeal Brief – Patent
Commissioner for Patents
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REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Appellant submits this Reply Brief in response to the Examiner's Answer mailed on July 25, 2008.

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I. REMARKS

A. Appellant's Claims 1-22, 24-31, 33-40, and 51-54 are not Obvious Over Beck in View of Inohara

1. **Neither Beck Nor Inohara Disclose Transferring Content to a Plurality of Servers For Publication at Substantially the Same Time As Required By Claims 1, 14, 30, 37, and 51**

In response to Appellant's arguments in the Amended Appeal Brief regarding the differences between the claimed invention and Beck and Inohara, the Examiner states that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." (Examiner's Answer, p.18). However, the Examiner ignores that one of the primary factors in determining non-obviousness is differences between the claimed invention and the prior art. The Amended Appeal Brief merely points out that neither Beck nor Inohara disclose transferring content to a plurality of servers for publication on each of the servers at substantially the same time. Thus, the combination of Beck and Inohara would not yield "transferring content to a plurality of servers for publication on each of the servers at substantially the same time," since neither one discloses such a limitation.

The Examiner's Answer further states: "Inohara was relied upon for teaching the publishing of data to multiple servers simultaneously including the use of multicasting for data redundancy." (Examiner's Answer, p.19). However, none of the passages of Inohara cited by the Examiner in support of that statement actually disclose transferring content to a plurality of servers for publication at substantially the same time, and nowhere else does Inohara disclose this limitation of claims 1, 14, 30, 37, and 51. Following is an annotated listing of each of section of Inohara cited by the Examiner:

- Col. 3, lines 23-30 and 34-36, and Col. 4, lines 24-30: These passages disclose two types of maintaining coherency between caches located at separate processors: cache-

coherent non-uniform memory access (CC-NUMA) and cache only memory access (COMA). With CC-NUMA, a processor corresponding to the "manager" grasps which memory fragment is cached to what processor (Col. 3, lines 24-27). With COMA, restrictions are imposed on the formation, deletion, and communications of caches to ensure identification and coherence of caches during a predetermined number of communications (Col. 3, lines 31-36). The COMA technique is used by a single computer or a plurality of computers physically in tight contact with each other, in which multicast or broadcast is assumed to be normally operative (Col. 4, lines 24-30). Neither of these methods for maintaining cache coherency includes transferring content to a plurality of servers for publication at substantially the same time. Inohara actually teaches that it "is difficult to widely apply [the COMA] techniques to the LAN and WAN environments." (Col. 4, lines 28-30).

- Col. 4, line 57: This portion of Inohara discloses the following passage which clearly does not support the Examiner's proposition: "each child server does not use at all the cache of another child server." Presumably, the Examiner meant to cite column 4, lines 55-56 which state: "In the prior example 2, each news is copied to all servers requesting it." Prior example 2 of Inohara discloses a Network News System in which "a user supplies news to a first server, the first server sends a copy of the news to a second server, and the second server supplies a copy of the news to another server, and so on." (Col. 2, lines 17-30). This sequential method of transferring news from one server to the next differs from the claimed limitation of transferring content to a plurality of servers for publication at substantially the same time.

- Col. 5, line 66 to Col. 6, line 1: This section of Inohara states that data necessary for a first server may be cached at two or more second servers among a plurality of servers. Caching data at two or more servers is different than transferring content to a plurality of servers for publication at substantially the same time.
- Col. 6, lines 46-47: Inohara states that "the first server transmits part or the whole of a list of caches possessed by the first server to one or more second servers." Transmitting a list of caches from one server to another server is different than transferring content to a plurality of servers for publication at substantially the same time.
- Col. 6, lines 55-64: This portion of Inohara discloses a method by which a first server stores a correspondence (reference information) between two sets of data, when it is determined that there is a high probability that after a client requests the first data set then the client will request the second data set. The reference information is then used to speed up future data retrieval. Creating and storing reference information regarding probabilities of data retrieval is clearly different than the claimed limitation of transferring content to a plurality of servers for publication at substantially the same time.
- Col. 8, lines 40-47: This passage in Inohara discloses that servers obtain information to be supplied to clients from different information sources such as a WWW server or a WWW proxy server. The servers obtain new information by periodically connecting to the information sources, by being notified of new information, or other methods. This section of Inohara does not disclose transferring content to a plurality of servers for publication at substantially the same time.
- Col. 14, lines 22-24: This section discloses transferring requests for information to a plurality of hosts sequentially (i.e. not at substantially the same time). Sending a request

for information sequentially to a plurality of hosts is different than transferring content to a plurality of servers for publication at substantially the same time.

- Col. 22, lines 36-39: This section of Inohara states that when an inter-server message processing unit receives a host URL message from another server, the cache directory is updated. Nowhere does this section of Inohara disclose transferring content to a plurality of servers for publication at substantially the same time.
- Col. 23, lines 38-40: This section discloses exchanging communication information between servers so that each server can take into consideration factors such as changes in line congestion with time zone and day of the week, and a change in a routing pattern to be caused by an enhancement of a communications line. This communication information exchanged between the servers, such as line congestion and changes in routing patterns, is not transferred for publication to a plurality of servers, and thus is not the same as the claimed limitation.

Thus, the Examiner's reliance upon Inohara for "teaching the publishing of data to multiple servers simultaneously" is misplaced. Inohara merely discloses a method and system for managing distributed data, not transferring content to a plurality of servers for publication at substantially the same time.

Neither Beck nor Inohara teaches, suggests, or discloses the publication of staging content at substantially the same time, as required in independent claims 1, 14, 30, 37, and 51 of the present application. Even if one were to combine the teachings of Beck with the teachings of Inohara, there would not be a resulting "publication," as that term is used in the present application, "at substantially the same time" as required in claims 1, 14, 30, 37, and 51 of the present application.

2. Independent Claims 1, 14, 30, 37, and 51 Would Not Have Been Obvious in View of Beck and Inohara.

Neither Beck nor Inohara address the problem of simultaneous publication of content across multiple production servers that is solved by the invention of the present application. Even assuming that Beck and/or Inohara disclose “publication” “at substantially the same time” (which they do not, as discussed above), one skilled in the art would find nothing in either reference, or their combination, as to how one would go about achieving such simultaneous publication.

The Examiner's finding of obviousness is a classic example of hindsight reconstruction, a practice that is prohibited by the Federal Circuit. See Sensonics, Inc. v. Aerosonic Corp., 38 U.S.P.Q.2d 1551 (Fed. Cir. 1996). Here, neither Beck nor Inohara make any disclosure whatsoever of publication of staging content on a plurality of production servers at substantially the same time. The Examiner is simply looking at the system and method disclosed in the present application, and, in hindsight, reflecting that Beck could have been modified to include such a system/method of simultaneous publication as in independent claims 1, 14, 30, 37, and 51 of the present application. There is no reason to believe that one skilled in the art would turn to either the Beck or Inohara references to solve the problem of substantially simultaneous publication when neither of those references addresses that problem.

3. Beck and Inohara Do Not Disclose Different Access Levels As Required By Claims 30 and 37

Furthermore, with respect to independent claims 30 and 37, Beck and Inohara do not alone, or in combination, disclose or suggest limiting access to a staging server, wherein a user associated with a first access level is allowed to control generation of staging content, and

wherein a user associated with a second access level is allowed to control the transfer of staging content from a staging server to multiple production servers, as required by claims 30 and 37.

Rather, Beck discloses that a business or organization wishing to preview a multimedia advertisement may import the advertisement into a staging database for review (Col. 3, lines 31-39). The advertisement can be edited by a variety of sources, such as a business, a publisher, or anyone providing the Web-based directory listing (Col. 3, lines 40-42). The advertisement is then reposted in the staging database so that the advertiser can preview the material for errors (Col. 3, lines 43-48). After the advertiser completes its review of the advertisement, the web pages are exported to the production database (Col. 3, lines 49-50). Thus, Beck does not disclose that there is a first access level associated with content generation and a second access level associated with transferring staging content from a staging server to multiple production servers. Inohara also does not disclose this limitation in that it does not teach a staging server or the transfer of staging content from a staging server to multiple production servers. Thus, claims 30 and 37 are even further distinguishable from Beck and Inohara.

The Examiner cites Col. 6, lines 20 and 49 of Beck as teaching "restricting the automatic transfer of staging content in response to a command associated with a second access level." The cited passages of Beck, which are a part of claims 18 and 19 of Beck, disclose that authorization is received from a client (claim 19), or Web browser client (claim 18), to update a production server by moving Web pages from a staging database to the production server. The claims also state that the Web pages are imported into the staging database from the client (Col. 6, lines 11-14 and 40-41). Thus, in claims 18 and 19, cited by the Examiner, a single client is responsible for both importing Web pages into the staging database and for moving the Web pages from the

staging database to the production server. Therefore, the Examiner errs in citing these passages as disclosing a second access level.

The subject matter of claims 30 and 37 would not have been obvious in view of Beck and Inohara to a person having ordinary skill in the art because neither Beck nor Inohara disclose: (1) transferring content from a staging server to a production server for publication at substantially the same time, or (2) a staging server having a first access level associated with content generation, and a second access level associated with transferring staging content from a staging server to a plurality of production servers. Therefore, the Examiner's rejection should be overturned and claims 30 and 37 should be allowed.

Dependent Claims 2-13, 15-22, 24-29, 31, 33-36, 38-40, and 52-54

Claims 2-13, 15-22, 24-29, 31, 33-36, 38-40, and 52-54 depend from independent claims 1, 14, 30, 37, and 51, respectively. Since those independent claims are allowable for the reasons discussed above, the corresponding dependent claims are also allowable, and the Examiner's rejection should be overturned.

B. Appellant's Claims 41, 43-46, and 48-50 Are Not Obvious Over Beck in View of Inohara in Further View of Jain

Independent Claims 41 and 46

The Examiner has rejected independent claims 41 and 46 as being obvious over Beck in view of Inohara, in further view of Jain. Independent claims 41 and 46 (similar to independent claims 1, 14, 30, 37, and 51, discussed above) require the replacement of production content by staging content for publication at substantially the same time. Thus, claims 41 and 46 require existing production content to be replaced by new staging content on a plurality of production servers for publication at substantially the same time.

As described on pages 13 and 14 of the Examiner's Answer, the Examiner cites Jain as teaching the “rollback” limitation of claims 41 and 46. Jain, however, does not disclose the replacing production content on a plurality of production servers with staging content for publication at substantially the same time, as required by independent claims 41 and 46. As discussed above with respect to independent claims 1, 14, 30, 37, and 51, those claims are not obvious over Beck in view of Inohara. Since the inclusion of Jain does not affect that analysis, for the same reasons discussed above, independent claims 41 and 46 are not obvious over Beck in view of Inohara, in further view of Jain. Thus, the Examiner's rejection should be overturned and claims 41 and 46 should be allowed.

Dependent Claims 43-45 and 48-50

Claims 43-45 and 48-50 depend from independent claims 41 and 46, respectively. Since those independent claims are allowable for the reasons discussed above, the corresponding dependent claims are also allowable, and the Examiner's rejection should be overturned.

C. Appellant's Claims Are Not Obvious Over Beck in View of Inohara in Further View of Chang

The Examiner cited Chang as providing limitations present in numerous dependent claims of the application. Since independent claims 1, 14, 30, 37, 41, 46, and 51 are allowable for the reasons stated above, the claims depending from those independent claims are also allowable, as discussed above.

Thus, the Examiner's rejection of those dependent claims should be overturned, and the claims should be allowed.

* * *

Because the subject matter of claims 1-22, 24-31, 33-41, 43-46, and 48-54 would not have been obvious to a person having ordinary skill in the art, the Examiner's rejection of the claims should be overturned, and the claims should be allowed.

Respectfully submitted,

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